



CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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David B. Cohen
Mayor

DATE: June 4, 2004

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Alexandra Ananth, Planner

SUBJECT: Docket item #332-03, ALD. LIPSITT requesting discussion of possible ordinance amendment to control construction of fences or walls on or near property lines

CC: Mayor David B. Cohen
Brooke K. Lipsitt
Mark Gilroy, Commissioner of Inspectional Services
Richard Griffin, Chairman, Urban Design and Beautification Commission
Roger Wyner, Chairman, Planning Board

Over the past two years there has been an increase in the number solid barrier fences installed at the front property line, along the sidewalks and streetscapes of Newton (*See "Attachment A," Guest Commentary from the Newton Tab, Summer 2003*). In August 2003, an informal Committee comprised of representatives from the Board of Aldermen, Planning Department, and Law Department was formed to study the feasibility of establishing criteria for the location, appearance, and maintenance of perimeter fences. The intent was to draft a proposed amendment to Chapter 20 of the City's Revised Ordinances that *promotes the open and natural characteristics of Newton's streetscapes and assures the safe visibility of both pedestrians and motor vehicular traffic*. Currently, there are no restrictions as to the type, height, or setbacks of privacy fences in Newton, and no building permit is required for fences less than 6 ft. tall.

Then-Alderman Brooke K. Lipsitt and Planning Department staff made a presentation at the September 22, 2003 meeting of the Zoning and Planning Committee, which included many examples of existing fences in Newton. Zoning and Planning Committee members discussed the matter and decided that there was sufficient interest to proceed with drafting a proposed ordinance.

Additional research was conducted and a draft ordinance was prepared for the regulation of fences, which was discussed at a Zoning and Planning Committee working session in December 2003. The Planning Department looked at many sample ordinances from municipalities both in and out of Massachusetts and tried to keep the proposed ordinance as simple as possible, while maintaining flexibility for property owners. The language of both the Historic District Ordinance and the Zoning Board of Appeals procedures were reviewed as models for proposed language in Section 20-40(h), page 6, *Exceptions*. Planning Department staff has also consulted with the Newton Historical Commission, all three local Historic District Commissions, the Commissioner of Inspectional Services, the Parks and Recreation Department, the School Department, the Urban Design and Beautification Commission (UDBC), and the Landscape Advisory Council. At their recent meeting, the Landscape Advisory Council requested that Chairman Stern convey the "Council's strong endorsement of the stated purpose of the proposed ordinance" (*SEE "ATTACHMENT B"*).

Because of the potential widespread application of this proposed ordinance, some Aldermen requested a public hearing before any action was taken by the Zoning and Planning Committee. A public hearing on the proposed fence ordinance was held on March 22, 2004; the Committee discussed the ordinance again in working session on April 12, 2004, and May 24, 2004.

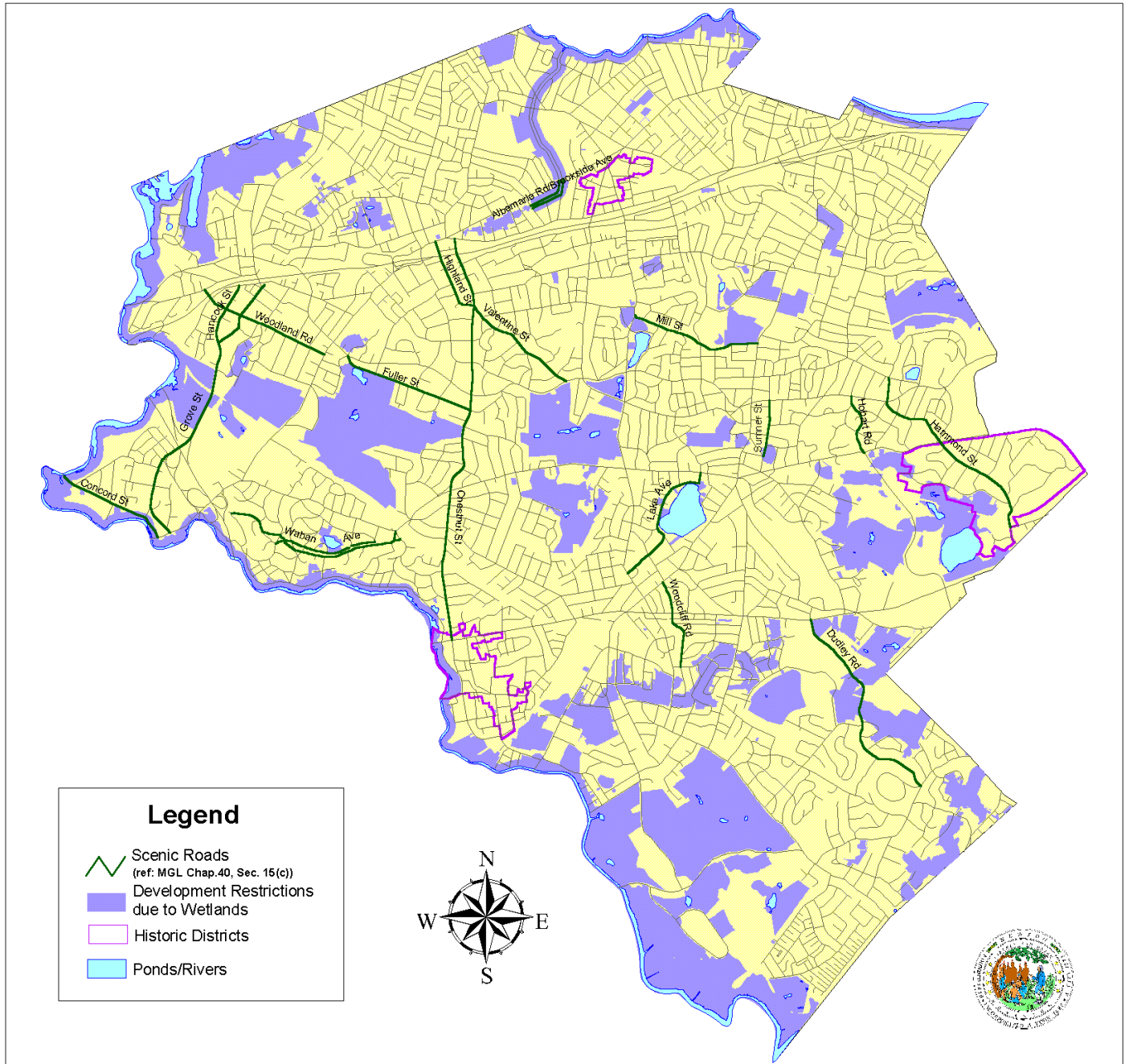
As a result of the discussions with the Zoning and Planning Committee, and feedback from other Commissions, Departments, and the public, the Planning and Law Departments developed a final proposed ordinance, which is attached (*SEE "ATTACHMENT C"*).

Highlights of the proposed Ordinance include:

- A fence permit application would be required only for fences *greater than 4 ft. in height*;
- Repairs to existing fences would not require a permit;
- In residential districts, fences taller than 4 ft. must be set back a minimum of 1 ft. for each foot that exceeds 4 ft. in height, up to a maximum of 6 ft. in height if bordering the front lot line;
- In residential districts, any section of a perimeter fences greater than four (4) ft. in height must be open if it is parallel to a front lot line;
- Fences abutting limited access highways may be allowed up to 12 ft. in height;
- Fences located in a local historic district or wetland would need approval of the appropriate Commission prior to submitting an application for a fence permit;
- No solid fences, except those made of stone, shall be permitted along a designated Scenic Road; (ref: MGL Ch 40 Sec 15(c))
- A map showing areas of restricted fence development (Scenic Roads, wetlands, historic districts) has been included;
- The Commissioner of Inspectional Services shall enforce the Ordinance; and
- The UDBC may hear appeals if compliance would involve substantial hardship.

Section 20-40(f): Regulation of Perimeter Fences

Areas Requiring Additional Review



CITY OF NEWTON

IN BOARD OF ALDERMEN

June 7, 2004

ORDINANCE NO. X-

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON AS FOLLOWS:

That the offenses and miscellaneous regulations, Chapter 20 of the Revised Ordinances of the City of Newton, Massachusetts 2001, as amended, be and are hereby further amended as follows:

1. Add a new section 20-40 as follows:

Sec. 20-40. Regulation of Perimeter Fences.

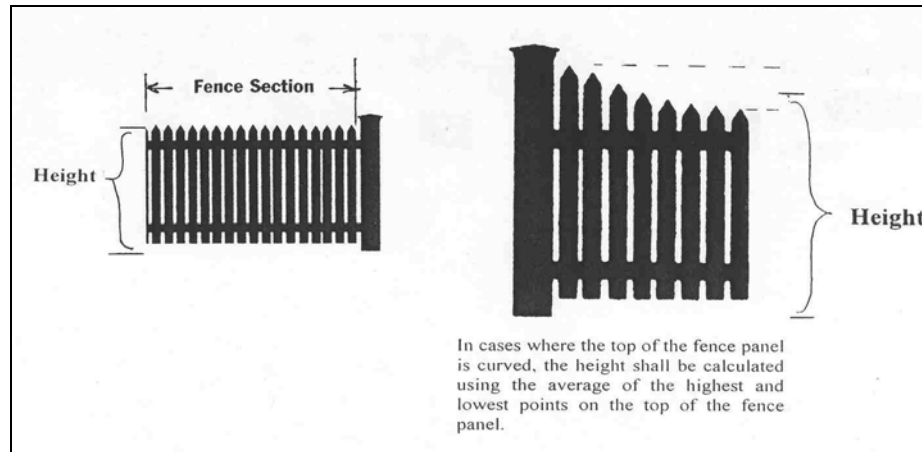
(a) *Purpose:* The purpose of these regulations is to establish criteria for the location, appearance and maintenance of perimeter fences. The intent is to regulate the location and type of fences in order to promote and to protect the open and natural characteristics of Newton streetscapes and neighborhoods, the unencumbered passage of pedestrians on city sidewalks and to assure the safe visibility of both pedestrians and motor vehicular traffic.

(b) *Definitions:* As used in this ordinance, the following terms shall be defined as set forth herein, unless otherwise stated:

Appropriate Materials: Materials normally manufactured for, used as, and recognized as fencing materials, including but not limited to, wrought iron or other decorative metals suitable for the construction of fences, fired masonry, concrete, stone, wood, vinyl and chain link. Such materials must be suitable for exterior use and weather and decay-resistant, provided that this requirement shall not prevent the use of wood that is untreated or unpainted.

Fence: Any permanent partition or barrier more than twelve (12) inches in height from the natural grade (or the top of a retaining wall if a fence is placed on such wall) bordering or parallel to and within five (5) feet of a lot line that in whole or in part defines the boundaries of said lot. A retaining wall or landscaping material such as hedges shall not be considered a fence. Fences located within the

interior of a lot which do not serve to define a lot boundary, such as, but not limited to, fences that enclose dog runs, play areas, pools, tennis courts, etc., are not subject to regulation pursuant to this ordinance except for any portion of such fence that borders or is parallel to and within five (5) feet of a lot line.



Height: The vertical distance measured from the natural grade of the ground at the location where the fence is erected (or from the top of a retaining wall if a fence is placed on such wall) to the top of the fence section or panel. Fence supports such as posts, columns, piers or pilasters, as well as gates and arbors may exceed the height restriction contained in this ordinance by not more than twenty-four (24) inches. In cases where the top of the fence section or panel is curved, the height shall be calculated using the average of the highest and lowest points on the top of the fence section or panel.

Lot Line: The division line between individual lots established by a plan filed in the registry of deeds, except that the line between land of the commonwealth used as an aqueduct or land formerly an aqueduct now owned by the city and adjoining land shall not be termed a lot line.

Lot Line, Front: A lot line that borders a public or a private way.

Lot Line Rear: The lot line that is opposite the front lot line. In the case of corner lots as defined in Section 30-1 of the Revised Ordinances, as amended, the rear lot line shall be the lot line opposite the street faced by the main entrance of any house located on the lot.

Lot Line, Side: Any lot line that is not a front or rear lot line.

Legal Nonconforming Fence: Any fence that does not conform with the requirements of this ordinance shall be considered nonconforming. Fences

erected prior to July 1, 2004 that do not conform with the requirements of this ordinance shall be considered legal nonconforming fences.

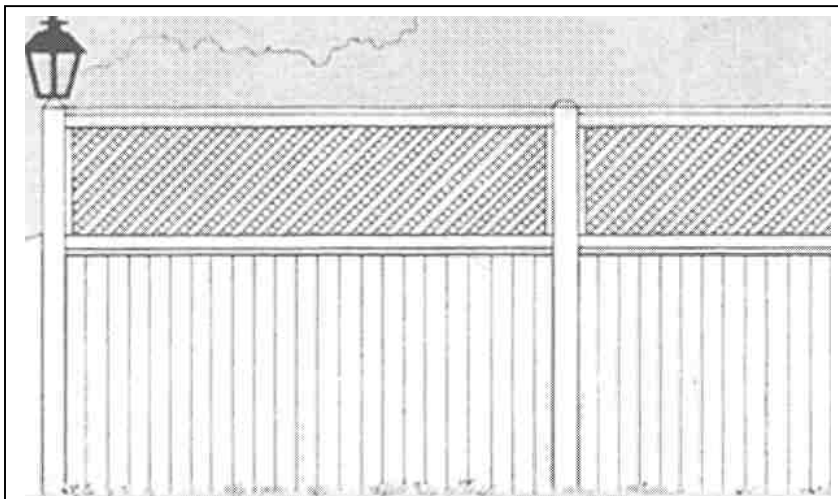
Repair: Routine maintenance, such as painting, or replacement of less than 50% of the length of a fence along any property line with in-kind material. Replacement of 50% or more of the length of a fence along any property line shall constitute a new fence.

(c) *Requirement of a Permit:* Any person erecting a perimeter fence greater than four (4) feet in height shall first obtain a fence permit from the Commissioner of Inspectional Services. Any person seeking to repair an existing fence shall not be required to obtain a fence permit. A permit fee not to exceed \$40.00 shall be paid by the applicant for such fence permit, except the City of Newton shall be exempt from payment of said fee. The Commissioner of Inspectional Services shall issue the fence permit if he or she finds that the proposed fence complies with all the requirements of this ordinance. An individual who has been denied a fence permit by the Commissioner may appeal such denial to the Urban Design and Beautification Commission in accordance with the procedure for such appeals established by the Commission. The Urban Design and Beautification Commission shall issue the fence permit if the Commission determines that the proposed fence complies with the requirements of this ordinance, or if owing to conditions especially affecting a particular lot compliance with the provisions of this ordinance would involve substantial hardship.

(d) *Regulation of Perimeter Fences in Residential Zoning Districts:*

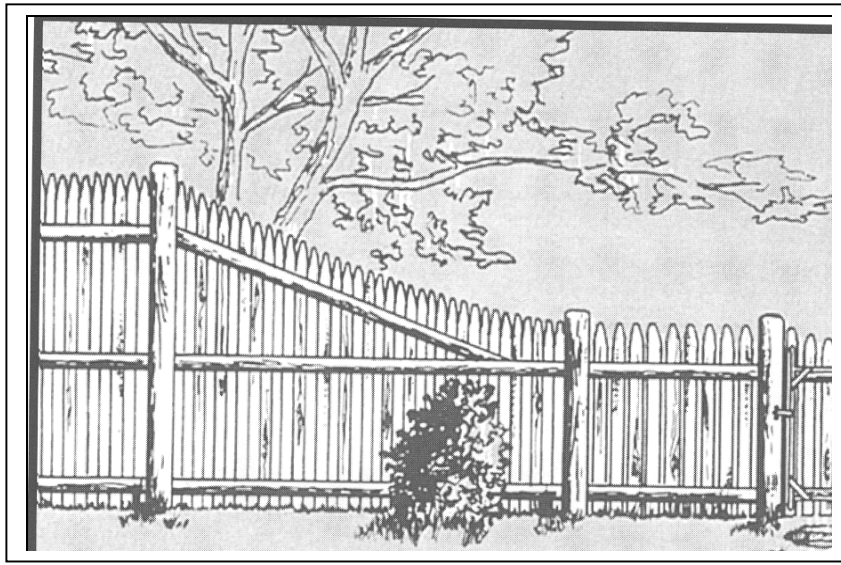
The height of perimeter fences located in residential zoning districts shall be regulated as follows:

(1) Fences bordering a front lot line: No fence or portion of a fence bordering or parallel to a front lot line shall exceed four (4) feet in height unless such fence is set back from the front lot line one (1) foot for each foot or part thereof such fence exceeds four (4) feet in height, up to a maximum of six (6) feet in height, and further, that any section of a perimeter fences greater than four (4) ft. in height must be open if it is parallel to a front lot line.



**Example of a
perimeter fence
with an open top**

(2) Fences bordering side lot lines: No fence or portion of a fence bordering or parallel to a side lot line shall exceed six (6) feet in height except as provided in subsection (6) below, and further, that any portion of a fence bordering a side lot line which is within two (2) feet of a front lot line shall be graded to match the height of any fence bordering the front lot line.



Example of a graded fence

(3) Fences bordering the rear lot line: No fence or portion of a fence bordering or parallel to a rear lot line shall exceed six (6) feet in height, provided, however, that the height of a rear lot line fence may be increased to a maximum of eight (8) feet if no portion of such rear lot line constitutes a side lot line for an adjoining lot or as provided in subsection (6) below.

(4) Limited access highway fences: Regardless of whether the fence is located along a front, side or rear lot line, fences abutting Route 128, or the Massachusetts Turnpike, may be increased to a maximum of twelve (12) feet in height.

(5) Fences bordering side or rear lot lines that immediately abut an MBTA or Commuter Rail line may be increased to a maximum of eight (8) feet in height.

(6) Fences bordering side or rear lot lines where the entire length of said side or rear lot lines immediately abut nonresidential or public use zoning districts may be increased to a maximum of eight (8) feet in height.

(7) Any fence located on top of a retaining wall must meet the height and setback requirements in subsection (d) above.

(e) *Regulation of Perimeter Fences in Nonresidential Zoning Districts:* The height of perimeter fences located in nonresidential zoning districts including fences erected by the City of Newton in the public use districts shall not exceed eight (8) feet in height except as necessary for athletic facilities such as, but not limited to softball diamonds or tennis courts which may be permitted at heights in conformance with established recreation standards.

(f) *Regulations Applicable to All Perimeter Fences:* The following regulations shall be applicable to all perimeter fences, including those erected by the City of Newton, regardless of the zoning district in which the fence is located.

(1) All fences must be positioned so that a finished side of the fence faces away from the lot on which it is constructed. Fences should follow the natural contours of the ground and shall be made of appropriate materials.

(2) No fence shall be constructed wholly or in part of barbed wire or razor wire. There shall be no sharp prongs on the top of a chain link or similar fence and all such prongs shall be either meshed or turned over.

(3) A legal nonconforming fence may be repaired. Restoration of said fence with materials different from the materials of the original fence and reconstruction or replacement of the entire fence with the same or different materials shall not be considered a repair, but shall be considered the erection of a new fence that must comply with the requirements of this ordinance.

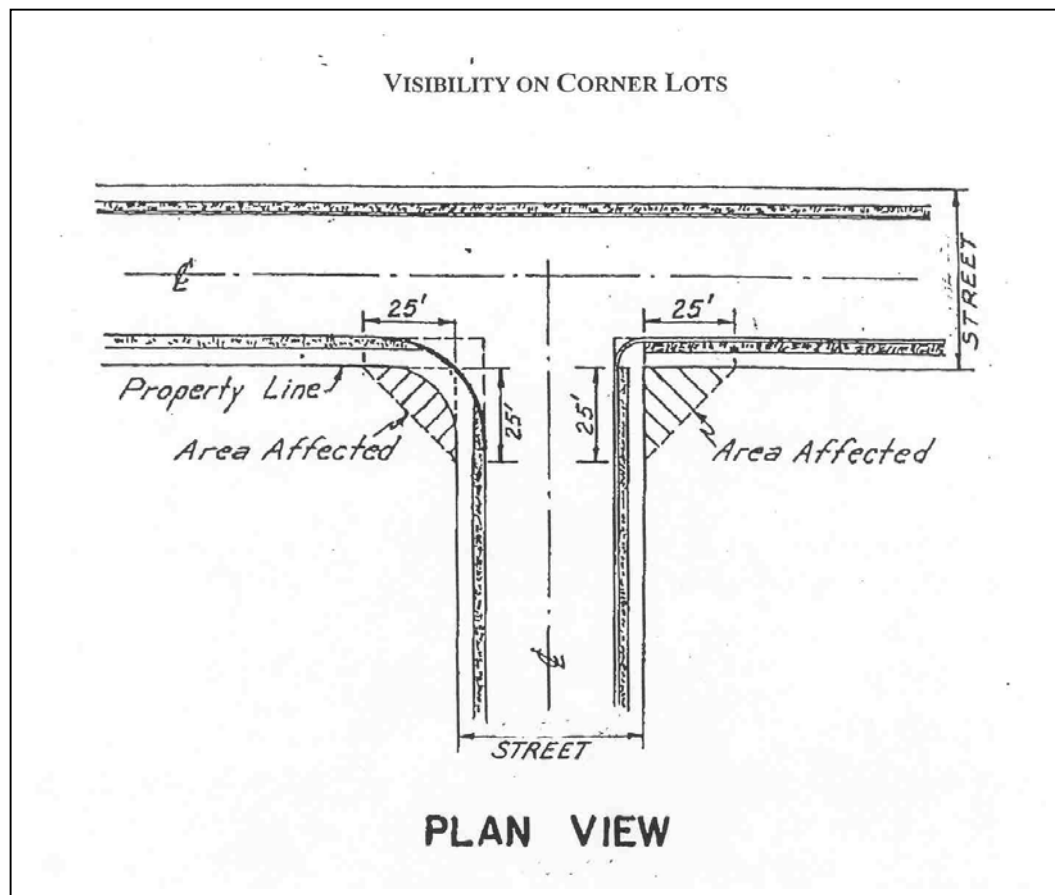
(4) Fences located in a local historic district must receive a Certificate of Appropriateness, Non-Applicability or Hardship from the local historic district commission prior to submitting an application for a fence permit.

(5) Fences located in a wetland area may be subject to additional regulations and must be reviewed by the Conservation Commission prior to submitting an application for a fence permit.

(6) *Scenic Road Fences.* In order to maintain the character of all designated scenic roads, no stockade fences or other fences with solid sections or panels excepting stone fences shall be permitted bordering or parallel to the front lot line along a designated scenic road. Notwithstanding the height regulations set out in subsections (d) and (e) above, no fence bordering or parallel to a front lot line along a designated scenic road may exceed four (4) feet in height above the natural grade.¹

¹ There are 17 designated Scenic Roads in Newton: Woodland Road, Hancock Street, Grove Street, Concord Street, Fuller Street, Valentine Street, Highland Street, Waban Avenue, Woodcliff Road, Lake

(7) Visibility on Corner Lots. No fence shall be erected or maintained on any corner lot as defined in Section 30-1 of the Revised Ordinances, as amended, in such a manner as to create a traffic hazard. No fence on a corner lot shall be erected or maintained more than four (4) feet above the established street grades within a triangular area determined by each of the property lines abutting each corner and an imaginary diagonal line drawn between two points each of which is located twenty-five (25) feet along the aforesaid property lines of said lot abutting each of the intersecting streets. The owner of property on which a fence that violates the provisions of this section is located shall remove such fence within ten (10) days after receipt of notice from the Commissioner of Inspectional Services that the fence violates the provisions of this section and creates a traffic hazard in the judgment of the City Traffic Engineer.



Avenue, Sumner Street, Hobart Road, Dudley Road, Mill Street, Hammond Street, Chestnut Street and Brookside Avenue.

(g) *Exemptions for Certain Types of Perimeter Fences:*

(1) Temporary or Construction Fences: A temporary or construction perimeter fence not exceeding six (6) feet in height or such other height as may be required by the State Building Code may be erected without a fence permit for the period of the event requiring the temporary fence or for the duration of construction.

(2) Protective Measure Fence: A perimeter fence that does not comply with this ordinance may be erected in the interest of public safety and to protect an enclosed area and the property therein or to deny access to a potentially dangerous property or location if, at the time a fence permit is requested, the Commissioner of Inspectional Services determines that a fence that complies with the regulations of the ordinance does not provide the required public safety, security or protection. An individual who has been denied a fence permit for a protective measure fence by the Commissioner may appeal such denial to the Urban Design and Beautification Commission in accordance with the procedure for such appeals established by the Commission. The Urban Design and Beautification Commission shall issue the fence permit for the protective measure fence if the Commission determines that the proposed fence is necessary to provide the required public safety, security or protection.

(3) Should there be any conflict between the requirements of this section and the relevant provisions of the State Building Code as most recently promulgated in 780 CMR 421.10 (6th ed.) which require a barrier enclosing an outdoor private swimming pool measuring at least 48 inches above finished ground level, the State Building Code shall prevail.

(h) *Exceptions:* The Urban Design and Beautification Commission may grant exceptions to the provisions of this ordinance in accordance with the procedures and criteria for such exceptions established by the Commission where it determines that owing to conditions especially affecting a particular lot, but not affecting the area generally, compliance with the provisions of this ordinance would involve substantial hardship, financial or otherwise, to the individual requesting the exception, and the desired relief may be granted without substantially nullifying or substantially derogating from the intent and purposes of this ordinance or the public good.

(i) Nothing in this ordinance shall relieve any person erecting a fence from compliance with any other applicable statute, ordinance or regulation, including but not limited to, the State Building Code, (780 CMR), G.L. c. 49, and Chapter 30 of the Revised Zoning Ordinances, as amended.

(j) *Penalty:* Whoever violates any of the provisions of this ordinance shall be punished by a fine of not more than fifty (\$50) dollars for each day during which the violation continues. Where non-criminal disposition of specified sections of this

ordinance by civil fine has been provided for in sections 20-20 and 20-21 of the Revised Ordinances, as amended, pursuant to the authority granted by G.L. c. 40, sec. 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set out in section 20-21(c).

(k) *Enforcement:* The Commissioner of Inspectional Services shall enforce all provisions of the ordinance, including instituting all necessary administrative or legal action to assure compliance therewith. Any person found to be in violation of the ordinance shall receive a written warning and a minimum of thirty (30) days to remediate all violations thereof prior to the institution of any enforcement action by the Commissioner.

Approved as to legal form and character

Daniel M. Funk
City Solicitor

Fence Permit Application

Applicant Name (Print): _____
Address: _____
City/Zip: _____
Telephone: _____
Signature: _____ Date: _____

Description of where fence is to be erected: _____

Type of fence construction: _____
Height of fence: _____
Proposed Date of Installation: ____/____/____
Installation Company: _____

Historic District or Scenic Road: _____

Please attach diagram showing proposed location, length, and setback of the proposed fence on the lot, the location of property lines, and relevant product information. Please include relevant setbacks and any necessary landscaping information.

Commissioner of Inspectional Services Recommendation: (Approve) (Deny)
Signature: _____ Date: _____